

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

---

|                   |   |                          |
|-------------------|---|--------------------------|
| JEFFERY J. LOUT,  | ) | CV 09-10-BLG-RFC-CSO     |
|                   | ) |                          |
| Petitioner,       | ) |                          |
|                   | ) |                          |
| vs.               | ) | FINDINGS AND             |
|                   | ) | RECOMMENDATION           |
|                   | ) | OF U.S. MAGISTRATE JUDGE |
| STATE OF MONTANA, | ) |                          |
|                   | ) |                          |
| Respondent.       | ) |                          |

---

On February 3, 2009, Petitioner Jeffrey J. Lout submitted a document titled “Notice of Appeal and Writ of Supervisory Control for Withdrawal of Guilty Plea from State District Court” and other documents. Lout also submitted a motion to proceed in forma pauperis. Lacking other alternatives, the Clerk of Court filed the documents as a petition for writ of habeas corpus under 28 U.S.C. § 2254. Lout is a state prisoner proceeding pro se.

As Lout has previously been advised, there is no federal writ of supervisory control. See Order of Dismissal at 1, *Lout v. State of Montana*, Cause No. CV 08-

*108-M-DWM (D. Mont. filed Aug. 1, 2008).* Additionally, “federal district courts have ‘no authority to review the final determinations of a state court in judicial proceedings.’” Gruntz v. County of Los Angeles (In re Gruntz), 202 F.3d 1074, 1078 (9th Cir. 2000) (en banc) (quoting Worldwide Church of God v. McNair, 805 F.2d 888, 890 (9th Cir.1986)). Although habeas actions are an exception to this rule, this Court would not have jurisdiction to hear Lout’s requests, even if his documents could properly be construed as a petition for writ of habeas corpus. He has already filed a petition for writ of habeas corpus in this Court and it was denied for lack of merit. *See Lout v. State of Montana, Cause No. CV 05-67-M-DWM-LBE (D. Mont. judgment filed Aug. 4, 2006).* Both this Court and the Ninth Circuit Court of Appeals denied his request for a certificate of appealability. *See Order at 3-5, Lout, No. CV 05-67-M; Order at 1, Lout v. Montana, No. 06-35843 (9th Cir. June 1, 2007).* Consequently, Lout may proceed only under the provisions of 28 U.S.C. § 2244(b). He has not obtained leave to file a second petition. This Court lacks jurisdiction. *See Burton v. Stewart*, 549 U.S. 147, 149 (2007) (per curiam). Therefore, there is no need to recharacterize the filing as a habeas petition.

The motion to proceed in forma pauperis should be denied because Lout cannot proceed with this action in this Court. Because there is no procedural basis

for the action, any appeal from this disposition would not be taken in good faith.

Based on the foregoing, the Court enters the following:

**RECOMMENDATION**

1. Lout's Petition (doc. 1) should be DISMISSED WITH PREJUDICE.
2. Lout's motion to proceed in forma pauperis (doc. 2) should be DENIED.
3. The Clerk of Court should be directed to enter a judgment of dismissal.
4. The District Court should CERTIFY, pursuant to Fed. R. App. P.

24(a)(4)(B), that any appeal from its disposition would not be taken in good faith.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS &  
RECOMMENDATION  
AND CONSEQUENCES OF FAILURE TO OBJECT**

Pursuant to 28 U.S.C. § 636(b)(1), Petitioner may serve and file written objections to this Findings and Recommendations within ten (10) business days of the date entered as indicated on the Notice of Electronic Filing. A district judge will make a de novo determination of those portions of the Findings and Recommendations to which objection is made. The district judge may accept, reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely file written objections may bar a de novo determination by the district judge.

Lout must immediately notify the Court of any change in his mailing address while this action remains pending. Failure to do so may result in dismissal of the action without notice to him.

DATED this 9th day of February, 2009.

/s/ Carolyn S. Ostby  
Carolyn S. Ostby  
United States Magistrate Judge